

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In re Application of	)	
	)	
<b>Paul Smith's College</b>	)	NAL/Acct. No. MB-200741410423
	)	Facility I.D. No. 51928
For Renewal of License for	)	FRN: 0015413909
Station WPSA(FM)	)	File No. BRED-20060905ABG
Paul Smiths, New York	)	

**FORFEITURE ORDER**

**Adopted: April 14, 2011****Released: April 15, 2011**

By the Chief, Audio Division, Media Bureau:

**I. INTRODUCTION**

1. In this Forfeiture Order, we issue a monetary forfeiture in the amount of two-hundred fifty dollars (\$250) to Paul Smith's College ("Licensee"), licensee of Class D FM Station WPSA(FM), Paul Smiths, New York ("Station"), for willfully and repeatedly violating Section 301 of the Communications Act of 1934, as amended ("Act"), by engaging in unauthorized operation of the Station.<sup>1</sup> We also admonish Licensee for willfully violating Section 73.3539 of the Commission's Rules ("Rules") by failing to timely file a license renewal application for the Station.<sup>2</sup>

**II. BACKGROUND**

2. On November 19, 2007, the Media Bureau ("Bureau") issued a Notice of Apparent Liability for Forfeiture ("NAL") in the amount of seven thousand dollars (\$7,000) to Licensee for these violations.<sup>3</sup> Licensee filed a Request for Reduction or Cancellation ("Request") on December 26, 2007.

3. As noted in the NAL, Licensee's renewal application for the current Station license term should have been filed on February 1, 2006, four months prior to the June 1, 2006, expiration date, but was not.<sup>4</sup> Licensee did not file the renewal application until September 5, 2006. Licensee did not file a request for special temporary authorization ("STA") to continue Station operations pending consideration of the late-filed renewal application. On November 19, 2007, the Bureau granted Licensee's renewal application and advised Licensee of its apparent liability for a forfeiture of \$7,000 for its failure to timely file the Station's renewal application and for unauthorized operation of the Station. In response, Licensee filed the subject Request.

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<sup>1</sup> 47 U.S.C. § 301.

<sup>2</sup> 47 C.F.R. § 73.3539.

<sup>3</sup> *Paul Smith's College*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 19936 (MB 2007).

<sup>4</sup> See 47 C.F.R. §§ 73.1020, 73.3539(a).

4. In its Request, Licensee states that the *NAL* should be cancelled or reduced because: (1) the violation was unintentional; (2) the Station did not believe it was engaging in unauthorized operation, and (3) the statute of limitations barred issuance of the *NAL*.

### III. DISCUSSION

5. The forfeiture amount proposed in this case was assessed in accordance with Section 503(b) of the Act,<sup>5</sup> Section 1.80 of the Rules,<sup>6</sup> and the Commission's *Forfeiture Policy Statement*.<sup>7</sup> In assessing forfeitures, Section 503(b)(2)(E) of the Act requires that we take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.<sup>8</sup>

6. Licensee does not dispute that it failed to file a timely renewal application for the Station or that it engaged in unauthorized operation of the Station, but states that these violations were unintentional.<sup>9</sup> As the Commission has held, however, violations resulting from inadvertent error or failure to become familiar with the FCC's requirements are willful violations.<sup>10</sup> In the context of a forfeiture action, "willful" does not require a finding that the rule violation was intentional. Rather, the term "willful" means that the violator knew that it was taking or not taking the action in question, irrespective of any intent to violate the Rules.<sup>11</sup>

7. Licensee next argues that the Station did not broadcast from "June 2007 ... until October 2007" and that as such, no unauthorized operation occurred.<sup>12</sup> We disagree. Class D stations are required to operate not less than the minimum operating hours set forth in Section 73.1740 of the Rules.<sup>13</sup> If a licensee wants its station to go silent for more than 30 days, it must submit a request for authority to do so with the Commission.<sup>14</sup> Here, Licensee failed to do so. As such, its Station's silent status was unauthorized.<sup>15</sup> Licensee further states that the Station resumed broadcasting in October 2007 after

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<sup>5</sup> 47 U.S.C. § 503(b).

<sup>6</sup> 47 C.F.R. § 1.80.

<sup>7</sup> *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

<sup>8</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>9</sup> Request at 1.

<sup>10</sup> See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4387 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992) ("*Southern California*") (stating that "inadvertence ... is at best, ignorance of the law, which the Commission does not consider a mitigating circumstance"); *Standard Communications Corp.*, Memorandum Opinion and Order, 1 FCC Rcd 358, 358 (1986) (stating that "employee acts or omissions, such as clerical errors in failing to file required forms, do not excuse violations").

<sup>11</sup> See *Five Star Parking d/b/a Five Star Taxi Dispatch*, Forfeiture Order, 23 FCC Rcd 2649, 2651 (EB 2008) (declining to reduce or cancel forfeiture for late-filed renewal based on licensee's administrative error); *Southern California*, 6 FCC Rcd at 4387. See also *Domtar Industries, Inc.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 13811, 13815 (EB 2006); *National Weather Networks, Inc.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 3922, 3925 (EB 2006).

<sup>12</sup> In its reply, Licensee indicates that June 2007 was the end date of its permit. In fact, the license expired on June 1, 2006. Thus, even if we were to credit Licensee's explanation concerning the Station's unauthorized silence, the unauthorized operation nevertheless occurred prior to the cessation of service in June 2007.

<sup>13</sup> 47 C.F.R. § 73.1740.

<sup>14</sup> 47 C.F.R. § 73.1740(a)(4).

<sup>15</sup> 47 C.F.R. § 73.1745.

Bureau staff informed Licensee during a telephone call that it could resume broadcasting after submission of its renewal application.<sup>16</sup> Commission precedent has established that parties relying on informal discussions with Commission staff do so at their own risk.<sup>17</sup> Any operation before the renewal grant on November 19, 2007, was unauthorized and in violation of the Act.

8. Licensee next asserts that the statute of limitations barred issuance of the *NAL*, which precludes the issuance of a forfeiture if the violation charged occurred more than one year prior to the issuance of an *NAL* or prior to the commencement of the current license term, whichever is earlier.<sup>18</sup> In this case, the renewal was granted and the *NAL* was issued on the same day, November 19, 2007. The renewal grant date is the first day of the current term of license. Hence, the *NAL* was issued during the current license term. Thus, upon grant of the renewal application, the Bureau was only authorized to issue a forfeiture for violations occurring within the year prior to the issuance of the *NAL*.<sup>19</sup> Here, it was barred from issuing a forfeiture to Licensee for violations occurring before November 19, 2006. Licensee's Section 73.3539 violation continued until it filed its renewal on September 5, 2006, and its unauthorized Station operation continued through November 18, 2007, the day before the Bureau granted the renewal. As such, Licensee's violation of Section 73.3539 of the Rules is beyond the reach of the statute of limitations. Therefore, we will cancel the *NAL* and instead admonish Licensee for its Section 73.3539 violation. However, the unauthorized operation of the Station occurred within the statute of limitations period.

9. We note that the Station is a Class D station. Given the Commission's recent precedent assessing forfeitures in the amount of \$250 against a licensee of a Class D FM station for violating Section 301 of the Act,<sup>20</sup> we will reduce the forfeiture amount *sua sponte* from \$4,000 (the amount set forth in the *NAL* for the Section 301 violation) to \$250.

10. We have considered Licensee's response to the *NAL* in light of the above statutory factors, our Rules, and the *Forfeiture Policy Statement*. We conclude that Licensee willfully<sup>21</sup> violated

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<sup>16</sup> Request at 1.

<sup>17</sup> *Applications of Mary Ann Salvatoriello*, Memorandum Opinion and Order, 6 FCC Rcd 4705 (1991), citing *Texas Media*, 5 FCC Rcd 2581, 2852 (1990), *aff'd sub nom. Malkan FM Associates v. FCC*, No. 90-1281, slip op. at 12 (D.C. Cir. Jun. 14, 1991).

<sup>18</sup> Request at 1, citing 47 C.F.R. § 1.80(c). See also 47 U.S.C. § 503(b)(6) ("No forfeiture penalty shall be determined or imposed against any person . . . if the violation charged occurred (i) more than 1 year prior to the date of issuance of the required notice or notice of apparent liability; or (ii) prior to the date of commencement of the current term of such license, whichever is earlier"). See *Detroit Public Schools*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 13688 (MB 2006) (explaining that the earlier date with respect to Section 503(b)(6) is the date that occurred first in time).

<sup>19</sup> See *John Crigler, Esq.*, Letter, DA 11-233 (MB Feb. 8, 2011) (cancelling proposed forfeiture where licensee's renewal application was granted after violations occurred but prior to the issuance of an *NAL* and the violations occurred more than one year prior to issuance of the *NAL*).

<sup>20</sup> See *School District of Haverford Township*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 2896, 2989 (MB 2008) (issuing *NAL* in the amount of \$500 for Class D station licensee's failure to timely file a license renewal application and for unauthorized operation of its station).

<sup>21</sup> Section 312(f)(1) of the Act defines "willful" as "the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law. 47 U.S.C. § 312(f)(1). The legislative history of Section 312(f)(1) of the Act clarifies that this definition of willful applies to Sections 312 and 503(b) of the Act, H.R. REP. NO. 97-765, 51 (Conf. Rep.), and the Commission has so interpreted the terms in the Section 503(b) context. See *Southern California*, 6 FCC Rcd at 4387-88.

Section 73.3539 of the Rules and willfully and repeatedly<sup>22</sup> violated Section 301 of the Act.<sup>23</sup> However, as described immediately above, we reduce the forfeiture amount *sua sponte* to \$250.

#### IV. ORDERING CLAUSES

11. Accordingly, IT IS ORDERED, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.283 and 1.80 of the Commission's Rules,<sup>24</sup> that Paul Smith's College SHALL FORFEIT to the United States the sum of two hundred fifty dollars (\$250) for willfully and repeatedly violating Section 301 of the Communications Act of 1934, as amended. Paul Smith's College is hereby ADMONISHED for its violation of Section 73.3539 of the Commission's Rules

12. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Commission's Rules within 30 days of the release of this Forfeiture Order. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.<sup>25</sup> Payment of the proposed forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced in the caption above. Payment by check or money order may be mailed to Federal Communications Commission, at P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank—Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank: TREAS NYC, BNF: FCC/ACV--27000001 and account number as expressed on the remittance instrument. If completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code).<sup>26</sup> Licensee will also send electronic notification on the date said payment is made to kelly.donohue@fcc.gov and jennifer.oberhausen@fcc.gov. Requests for payment of the full amount of the forfeiture under an installment plan should be sent to: Associate Managing Director-Financial Operations, Room 1-A625, 445 12th Street, S.W., Washington, D.C. 20554.<sup>27</sup>

13. IT IS FURTHER ORDERED, that a copy of this Forfeiture Order shall be sent by Certified Mail-Return Receipt Requested, and by First Class Mail to Ms. Jill Susice, Paul Smith's College, P.O. Box 265, Paul Smiths, New York 12970 and to its counsel, William L. Owens, Esq., Stafford, Owens, Curtin & Trombley, PLLC, 1 Cumberland Avenue, P.O. Box 2947, Plattsburgh, NY 12901.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle  
Chief, Audio Division  
Media Bureau

<sup>22</sup> Section 312(f)(1) of the Act defines "repeated" as "the commission or omission of [any] act more than once or, if such commission or omission is continuous, for more than one day." 47 U.S.C. § 312(f)(1). *See also Southern California*, 6 FCC Rcd at 4388 (applying this definition of repeated to Sections 312 and 503(b) of the Act).

<sup>23</sup> 47 U.S.C. § 301.

<sup>24</sup> 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.283, 1.80.

<sup>25</sup> 47 U.S.C. § 504(a).

<sup>26</sup> *See* 47 C.F.R. § 1.1914.

<sup>27</sup> *Id.*